

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PAULA ERIKA DIAS DE
CARVALHO,

Plaintiff,

vs.

MR. DIRECTOR OF NEBRASKA
SERVICE CENTER, et al.,

Defendants.

8:22-CV-267

MEMORANDUM AND ORDER

The plaintiff, Paula Erika Dias de Carvalho, alleges a claim arising out of the failure of U.S. Citizenship and Immigration Services (USCIS) to promptly adjudicate her application for adjustment of status and issue an employment authorization and travel parole document. [Filing 1](#). The defendants are the director of the Nebraska USCIS service center, the Director of USCIS, the Attorney General of Nebraska, and the U.S. Attorney General. [Filing 1 at 2](#).

This matter is before the Court on the Nebraska Attorney General's motion to dismiss the claim against him under [Fed. R. Civ. P. 12\(b\)\(6\)](#). [Filing 8](#). His argument is straightforward: He points out that his office has no jurisdiction or authority over the plaintiff's immigration status. *See* [filing 9](#).

And of course, that's absolutely correct. The authority to control immigration is vested solely in the Federal government, rather than the states. [Hampton v. Wong](#), 426 U.S. 88, 101 n.21 (1976) (citing [Truax v. Raich](#), 239 U.S. 33 (1915)); *see* [Hines v. Davidowitz](#), 312 U.S. 52, 62-64 (1941); *see also* [Kleindienst v. Mandel](#), 408 U.S. 753, 765-67 (1972). States enjoy no power with respect to the classification of aliens. [Plyler v. Doe](#), 457 U.S. 202, 225 (1982).

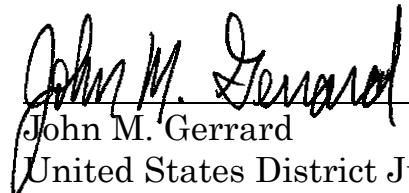
And to survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Here, the plaintiff's complaint gives the Court no plausible basis to infer that the Nebraska Attorney General is responsible for any delay in adjusting the plaintiff's immigration status, or has any authority to provide the injunctive relief she prays for. See [filing 1](#). Accordingly,

IT IS ORDERED:

1. The Nebraska Attorney General's motion to dismiss ([filing 8](#)) is granted.
2. The plaintiff's claim against the Nebraska Attorney General is dismissed.
3. The Nebraska Attorney General is terminated as a party.

Dated this 4th day of October, 2022.

BY THE COURT:



John M. Gerrard
United States District Judge